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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/939,412	08/24/2001	Jerry L. Aikins	ZIM0090	4304

832 7590 04/17/2003

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FORT WAYNE, IN 46802

EXAMINER

PRIDDY, MICHAEL B

ART UNIT	PAPER NUMBER
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3732

DATE MAILED: 04/17/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/939,412

Applicant(s)

AIKINS ET AL.

Examiner

Michael B Priddy

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 24 March 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☐ Claim(s) 1-40 is/are pending in the application.
- 4a) Of the above claim(s) 17-29 is/are withdrawn from consideration.
- 5) ☐ Claim(s) 1-3 is/are allowed.
- 6) ☐ Claim(s) 4-13, 15 and 30-40 is/are rejected.
- 7) ☐ Claim(s) 14 and 16 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Election/Restrictions

Applicant's election without traverse of Group I, claims 1-16 and 30-40 in Paper No. 5 is acknowledged.

Claim Objections

Claim 12 is objected to because of the following informalities: claim 12 should depend from claim 10 in order to provide proper antecedent basis for "said recess" in line 2. Appropriate correction is required.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 4 and 5 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. In lines 1 and 2 of claim 4, Applicant has apparently doubly recited "a hole". This causes it to be unclear whether Applicant intends to refer to the hole(s) recited in claim 1 or if Applicant is setting forth new or additional holes. The Examiner believes it was Applicant's intention to refer to the hole(s) of claim 1 and that "a hole" in line 1 should be changed to --one of said plurality of holes-- and "a hole" in line 2 should be changed to --said at least one hole--.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 6, 13 and 15 are rejected under 35 U.S.C. 102(b) as being anticipated by Johnston (US 3,716,050). Johnston teaches a bone plate assembly comprising a bone plate 20 having elongate plate 22 and blade 24 portions connected to one another at a bend and disposed at an angle with respect to one another, said plate portion 22 having a first hole 30 therein and a second hole 26 therein which is disposed intermediate said first hole and said bend; a strut screw 36 disposed through said first hole 30 and extending toward said blade portion; a top screw 36 disposed through said second hole 26, said top screw 36 extending angularly to one side of said strut screw; a third hole disposed intermediate said first and second holes; and another top screw disposed through said third hole, said another top screw extending angularly to another side of said strut screw opposite said first side.

Claim 8 is rejected under 35 U.S.C. 102(b) as being anticipated by Crook (US 5,365,996). Crook teaches a method for making customized fixation devices. As described in columns 3 and 4, a scanning apparatus 40 is used to generate tomographic image data of the treatment site which is subsequently modified by image combiner 42 so that it is suitable for use with CAD system 46. CAD system 46 inputs a two-dimensional rendition of the three-dimensional treatment site into a

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stereolithography system 48 which ultimately provides a three-dimensional model of the treatment site. Finally a metal fixation device is made ready for implantation using the three-dimensional model. As shown in Fig. 2, the custom fixation device may take the form of a bone plate 30.

Claims 9-12 are rejected under 35 U.S.C. 102(b) as being anticipated by Lowery et al. (US 5,364,399). Lowery et al. teach an elongate plate portion 20 disposed in a plane, said plate portion 20 including first 27 and second 41 holes disposed closely adjacent one another, said first hole 27 disposed through said plate portion 20 at an angle relative to said plane and said second hole 41 disposed through said plate portion 20 substantially perpendicular to said plane; and first 30 and second 45 screws each having a head, said first and second screws respectively disposed through said first 27 and second 41 holes, said head 47 of said second 45 screw abuts said head 32 of said first screw 30 to prevent withdrawal of said first screw 30 outwardly of said plate portion 20 positioned to prevent removal of said first screw 30 from said plate portion 20; and wherein said heads of said screws are at least partially disposed within a recess 42 which encompasses at least a portion of each of said first and second holes.

Claims 30-40 are rejected under 35 U.S.C. 102(b) as being anticipated by Gotfried (US 5,429,641). Gotfried teaches a bone plate having elongated plate 1 and blade (2 portions disposed at an angle with respect to one another, said plate portion 1 having a plurality of holes 7 therein; an insertion guide member 47 detachably securable to said plate portion of said bone plate; and a screw guide 43 detachably securable to said insertion guide member in alignment with one of said plurality of holes in said plate

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portion; wherein said screw guide further includes a screw guide member III (strut screw guide member / top screw guide member) disposed at an angle with respect to each of said blade and plate portions and through which a strut screw II (top screw) may be inserted; said kit further comprising a strut screw II (top screw) insertable through said guide member and said one of said holes 7 in said plate portion 1; further including a handle member 21 engageable with said screw guide III and said insertion guide member 20 for detachably securing said screw guide III and said insertion guide member 20 to one another.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over Johnston as applied to claim 6 above, and further in view of the following. Johnston discloses the claimed invention except for the radius defined intermediate said plate portion and said blade portion being .25 inches or less. It would have been an obvious matter of design choice to one skilled in the art at the time the invention was made to construct the bone plate of Johnston such that the radius defined intermediate said plate portion and said blade portion was .25 inches or less, since applicant has not disclosed that such solves any stated problem or is anything more than one of numerous shapes or configurations

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a person ordinary skill in the art would find obvious for the purpose of providing an angle between two portions of a bone plate. In re Dailey and Eilers, 149 USPQ 47 (1966).

Allowable Subject Matter

Claims 1-3 are allowed.

Claims 4 and 5 would be allowable if rewritten or amended to overcome the rejection(s) under 35 U.S.C. 112, second paragraph, set forth in this Office action.

Claims 14 and 16 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael B. Priddy whose telephone number is (703) 308-8620. The examiner can normally be reached on Mon.-Fri. 8 a.m. - 5 p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kevin Shaver can be reached on (703) 308-2582. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 872-9302 for regular communications and (703) 872-9303 for After Final communications.

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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1148.

Michael Priddy
Michael Priddy
April 8, 2003

Kevin Shaver
KEVIN SHAVER
4/9/03
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 3700